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In the Supreme Court of the United States

No. .....

OCTOBER TERM, 1953.

HALL BROS., *et al.*,
Petitioners,

vs.

CITY OF CLEVELAND, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of the State of Ohio
and
SUPPORTING BRIEF.

Petitioners pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Ohio, entered in the above-entitled case on February 24, 1954.

OPINIONS BELOW.

The only opinion rendered in this case was by the Court of Appeals for the Eighth District of Ohio, and is unreported. (R. p. 31.) The Supreme Court of Ohio in overruling Petitioners' "Motion to Certify" and dismissing their appeal "as a matter of right" wrote a memorandum journal which appears and is reported in 161 Ohio State, p. 71. (R. p. 41.)

JURISDICTION.

On the 24th day of February, 1954, the judgment of the Supreme Court of the State of Ohio was entered affirming the judgment of two lower courts. This decision upheld the validity of No. 3.3710 of the Codified Ordinances of the City of Cleveland. (R. pp. 14-15.)

The jurisdiction of this Court is invoked under Title 28, Section 1257 (3) U. S. C., questioning the validity of a state statute, "by writ of certiorari where any title, right, privilege or immunity is especially set up and claimed under the Constitution of the United States.

Petitioners by their pleadings in the Common Pleas Court of Cuyahoga County, base their right to injunctive relief on the grounds of "an unconstitutional restraint of trade" (R. p. 6); in that the inspection fee charged nonresidents of the City of Cleveland by No. 3.3710 is discriminatory and unlawful, in violation of their rights under the State and Federal Constitutions to engage in a legal and lawful enterprise. This case was presented to the first court on the pleadings and a Stipulation of Fact. Nothing further was offered in evidence. (R. pp. 18-28.) Oral argument was dispensed with and supporting briefs were submitted.

Petitioners, in all three courts ruling adversely to their interests, upholding the validity of No. 3.3710, relied on the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States, providing for the safeguarding of their privileges and immunities as citizens of the United States; the equal protection of the laws; and the prevention of the taking of their property without due process of the laws.

The adverse decision of the Common Pleas Court was appealed to the Court of Appeals for Cuyahoga County, Eighth District of Ohio. As a principal assignment of

error in this Court, petitioners asserted that the discrimination in No. 3.3710, based on residency and non-residency, was illegal and unlawful; and in violation of their constitutional rights under both the State and Federal Constitutions.

"THIRD ASSIGNMENT OF ERROR.

In that 'routine inspection services' are rendered free of charge to slaughter houses located within the City of Cleveland, while slaughter houses located outside of the City of Cleveland are forced and required to pay for these same services, constituting an illegal and unlawful discrimination based on residency and non-residency in violation of the constitutional rights under both the State and Federal law." (R. pp. 30-31.)

The decision of the Court of Appeals (R. p. 35) affirming the Common Pleas Court was appealed to the Supreme Court of the State of Ohio "as a matter of right in a case involving a constitutional question" (R. p. 37), as well as on condition that a "Motion to Certify the record be allowed." The same assignment of error was asserted in this Court of last resort in the State of Ohio. (R. p. 39.)

QUESTIONS PRESENTED.

1. Whether the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States, safeguarding the privileges, rights and immunities of citizens of the United States; preventing the taking of their property without due process of the laws; and guaranteeing them the equal protection of the laws, are abridged and revoked by No. 3.3710 of the Codified Ordinances of the City of Cleveland in the exercise of a police power under the Home Rule Provisions of its Charter.

(A) Whether the operation of No. 3.3710 of the Codified Ordinances of the City of Cleveland, classifies meat handling establishments on the basis of residency or non-residency, in preference to the meat handling establishments located within the City of Cleveland.

(B) Whether non-resident establishments doing business in the City of Cleveland, and submitting to the restrictive, regulatory, confiscatory and supervisory provisions of its ordinances, are entitled to the equal operation and protection of its laws.

2. Whether the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States, are subservient to the exercise of a police power under the Home Rule Provisions of the Charter of the City of Cleveland.

Other questions, for probable consideration, are briefly stated following:

1. Whether the exercise of a police power by the City of Cleveland is primarily for the benefit and protection of the health and welfare of its general public.

2. Whether the right to inspect meat for human consumption, for the protection and preservation of the health and welfare of the general public of the City of Cleveland stemming from the police power, is obligatory as to the City Government, and compulsory as to all meat handling establishments doing business in the City of Cleveland.

3. Whether the standards and methods employed in the "meat inspection service" carried on by the food and drug administration of the Cleveland Health Division, are subject to the control and discretion of the non-resident meat handling establishments.

4. Whether Sections 3.3710 (R. pp. 14-15) and its companion ordinances 3.4137 (R. p. 15), 3.4138 (R. p. 15) and 3.4139 (R. p. 15) are prohibitive, restrictive, confiscatory and mandatory as to the petitioners; and lacking of any alternative.

5. Whether the exercise by the City of Cleveland of this police power to "inspect meat," is a public purpose within the purview of the Constitutional provisions protecting and preserving the health and welfare of the general public of the City of Cleveland, chargeable primarily and exclusively to the government.

ORDINANCE INVOLVED.

The ordinance in controversy is printed at length following:

"Section 3.3710. Charge for Inspection.

(a) The reasonable cost of inspection, including time consumed and expenses incurred in traveling by bureau employes outside of the city limits, shall be paid by establishments rendered inspection services under this ordinance when such establishments are located outside the city limits of the City of Cleveland. When more than one establishment is included in any inspection trip made by bureau employes outside the city limits, the proper proportion of the traveling expenses of said employes shall be paid by each establishment inspected.

(b) Establishments located within the City of Cleveland rendered inspectional services other than customarily rendered all meat handling establishments shall also pay the reasonable cost of such services rendered, such reasonable cost to be established by a stated list of charges according to a schedule approved by the official charged with the enforcement of this chapter and kept on file at the offices of the bureau of meat and dairy inspection."

SPECIFICATION OF ERRORS.

1. The classification within "all meat handling establishments," of those "establishments located outside the city limits of the City of Cleveland," and "establishments located within the City of Cleveland," is discriminatory, unreasonable, void and unlawful in violation of petitioners' rights under the Constitution of the United States.

2. The inspection fee sought to be assessed by No. 3.3710 against non-resident slaughter houses only, is flatly repugnant to the clause of the Constitution (Section 1, Amendment 14) violating the privileges or immunities of citizens of the United States; depriving persons of life, liberty, or property, without due process of the laws; denying to any person within its jurisdiction the equal protection of the laws. It is a direct discrimination between citizens of the City of Cleveland and citizens of other political subdivisions of the State of Ohio, in respect to a legal and lawful business enterprise.

(a) It makes that which is lawful within the City of Cleveland, for all persons (establishments) resident therein, unlawful for citizens (establishments) of other political subdivisions of the state, unless upon onerous conditions, not imposed upon its own citizens, or persons resident within it.

(b) It makes the discrimination rest upon the very fact which alone determines in the cases of citizens of the United States, whether a person is or is not a citizen of the City of Cleveland, to-wit: "establishments located outside the city limits" and "establishments located within the City of Cleveland."

3. The provisions of No. 3.3710 in their application to petitioners, are a denial of the equal protection and operation of the laws, a violation of their rights, privileges and immunities, and the taking of their property without the due process of the laws.

STATEMENT OF CASE.

All of the Petitioners, 14 in number, are engaged in the slaughter and sale of meat for human consumption. The City of Cleveland is their principal market, although their places of business are located beyond the City limits. Within the City of Cleveland are a number of slaughter houses engaged in a similar operation, all of whom are competitors of the Petitioners. All slaughter houses, either in Cleveland or in locations outside of Cleveland, are regulated and governed (R. p. 15) by Sections Nos. 3.3710 (R. pp. 14-15), 3.4137 (R. p. 15), 3.4138 (R. p. 15) and 3.4139 (R. p. 15) of the Codified Ordinances of this municipality. The Stipulation of Fact (R. p. 13) establishes that they must all submit to supervision of the Food and Drug Administration of the Cleveland Division of Health, as a condition of right to sell their meat within the City of Cleveland.

On January 13, 1931, also its effective date, the Ordinance in controversy Section 698, titled "Charge for Inspection" was passed by the City Council of Cleveland. On May 14, 1951, by Ordinance numbered 990-A-51, Section 698 was renumbered Section 3.3710. No other change was made in either its terms or provisions. (R. p. 9.)

Section 3.3710, the Ordinance in controversy, among other things, provides for "the reasonable cost of inspection," including time consumed and expenses incurred in traveling, by bureau employees outside of the city limits, to be paid by non-resident establishments rendered inspection services. Since its effective date, January 13, 1931, and prior to June 1, 1951, the charge to non-resident slaughter houses, under the Ordinance, consisted of time consumed and expenses incurred in traveling by the bureau employees to and from the non-resident slaughter houses.

On June 1, 1951, twenty years later, a directive (R. pp. 15-16) issued over the signature of the law director for the City of Cleveland, increased these charges $16.00 daily, exclusively to each non-resident slaughter house. This was based on the time consumed by a bureau employee at each non-resident slaughter house during a regular eight-hour working day. This increase to non-resident slaughter houses only, was over and above all travel charges and any overtime that might be incurred. For the purposes of this case, the inspection services in question are defined by the Stipulation of Fact (R. p. 17) as "routine inspection services customarily rendered during a regular eight-hour working day," regardless of starting time. The directive (R. p. 16) indicating the $16.00 daily charge to be made non-resident slaughter houses, does not provide for any charge to be made to slaughter houses located in the City of Cleveland. This is on authority of the Ordinance (3.3710) (R. pp. 14-15) held valid by the Supreme Court of the State of Ohio. As a result, the decision of affirmance by the Supreme Court of the State of Ohio makes this $16.00 daily payment for "routine inspection services customarily rendered" to non-resident slaughter houses, a prerequisite to the right to do business in the City of Cleveland. The differential thus established by the decision of the Supreme Court of Ohio (validating No. 3.3710) within the classification of slaughter houses doing business in the City of Cleveland, is upwards of $6,000 annually (R. pp. 17-36) to each petitioner's slaughter house, as against nothing, to slaughter houses located in the City of Cleveland.

The standard and methods of inspection are established and maintained by the Food and Drug Administration of the Cleveland Division of Health. The Petitioners, under no circumstances, have any voice or control over the inspection as conducted.

The only contention of the Petitioners is that No. 3.3710 held valid by the Supreme Court of the State of Ohio, requiring each of them to pay upwards of $6,000.00 annually for "routine inspection services customarily rendered" as a condition of right to do business in the City of Cleveland, is oppressive and burdensome to their commerce in competition with the slaughter houses located in the City of Cleveland. It must be emphasized that Petitioners do not contest or question the charge for travel time, travel expense, or overtime incurred.

The case was submitted originally to the Court of Common Pleas of Cuyahoga County, on the pleadings, a Stipulation of Fact and Briefs. No oral argument or additional evidence being offered in the case (R. pp. 18-28). Petitioners prayed for injunctive relief restraining and enjoining the City of Cleveland from collecting and charging fees for "routine inspection services customarily rendered" (R. p. 7) as being discriminatory (R. p. 6) in relation to their payment-free competitors located in the City of Cleveland. This Court denied Petitioners the relief prayed for, and made a finding for defendants, holding that the Ordinance was valid. No opinion was rendered. (R. p. 18.)

An appeal on questions of law was perfected to the Court of Appeals of Cuyahoga County, Eighth District of Ohio, assigning among other errors, that Petitioners' rights under both the Federal and State Constitutions (R. pp. 18-30) had been violated. The Court of Appeals affirmed the decision of the lower court, holding the Ordinance valid, and within the proper exercise of a police power. The opinion rendered by this Court is unreported at this time. (R. p. 35.) Petitioners perfected their appeal to the Supreme Court of the State of Ohio, "as a matter of right involving a constitutional question," as well as on condition that a "motion to certify" the record be granted. (R.

p. 37.) The errors assigned in that court were identical to those in the lower court. (R. p. 39.) The Supreme Court of the State of Ohio, without opinion, dismissed the appeal "as a matter of right" on the grounds that "no debatable constitutional question existed," and overruled Petitioners' "Motion to Certify," as indicated by its memorandum notation.

Thus, the question as to whether business establishments located within a municipality are entitled to a preference over non-resident establishments in the conduct of a lawful business, has been judicially avoided and left unanswered by the Court of last resort in the State of Ohio. This puts in imminent peril the rights of Petitioners under Section 1 of the Fourteenth Amendment to the Constitution of the United States, providing for the safeguarding of their privileges and immunities as citizens of the United States. Furthermore, the refusal of this court of last resort in the State of Ohio, to entertain Petitioners' appeal, results in the taking of their property without due process of the laws, and a denial of the equal protection of the laws.

REASONS FOR GRANTING THE WRIT.

The vital importance of this question to Petitioners, and persons similarly situated, is demonstrated by the result.

No. 3.3710, the contested ordinance, compels the payment of $6,000.00 upwards annually, by each non-resident meat-handling establishment for the privilege of selling their products in the City of Cleveland. This is a prohibitive and restrictive prerequisite, as a condition of the right of each non-resident meat handling establishment to do business in the City of Cleveland. However, excluded from the operation of 3.3710 as to charge for "routine

inspection services customarily rendered," are all meat handling establishments located in the City of Cleveland. (R. p. 17.) The ordinance in its terms includes all meat handling establishments doing business in the City of Cleveland; but in its provisions for the payment of "routine inspection services customarily rendered" singles out non-resident meat-handling establishments specifically.

Under provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States, the Supreme Court of the State of Ohio in refusing to review this case, affirmed an erroneous decision. The only apparent basis for the decision of that court must be found in the statement contained in the opinion of the Court of Appeals for the Eighth District of Ohio.

> "It is our conclusion that the ordinance in question is a valid exercise of the Police Power under the Home Rule Provisions of the charter of the City of Cleveland and must be upheld." (R. p. 35.)

If this conclusion of the law is correct, indicating that Section 1 of the Fourteenth Amendment to the Constitution of the United States is subservient to the "exercise of the police power under the Home Rule Provisions of the charter of the City of Cleveland," then Petitioners' cause, as well as all other persons similarly situated, is lost. They have no alternative but to cease doing business. Or to continue until the oppressive and burdensome competition of the slaughter houses located in the City of Cleveland, bankrupts them. To seek other markets would not in any sense solve their problem. The decision of the Supreme Court of the State of Ohio, as it stands, would give rise to similar and identical legislation throughout the State of Ohio. Each municipality on the authority of this case could enact ordinances discriminating against

non-resident business establishments, in preference to their locally situated industries.

If the rights, privileges, immunities and equal protection of the laws due citizens of the United States under both Federal and State Constitutions, are made subservient to the "exercise of a police power by a municipality operating under the Home Rule Provisions of a Charter," then the fundamentals of the theory of our government stand defeated. The circumstance, as indicated by this contested decision, will give rise to monopoly and the unequal protection and application of the laws; based primarily on residency or non-residency in a given political subdivision. This concept of governmental authority in a municipality, will not be limited to meat handling establishments only. Any other non-local industry or business, may as well be affected by this decision on the basis of it being non-resident to the municipality enacting the legislation. In fact there is probability that this type of legislation may attempt discrimination against industry engaged in interstate commerce, as the dictum in the Opinion (R. p. 35) is general in its terms and lacking of any limitations or exceptions.

As a general proposition, trade barriers between states have ever been repugnant to the philosophy of government as enunciated by the Constitution of the United States. It is not only logical, but fundamentally proper to assert, that the same theory of relationship between political subdivisions of a state must prevail. As to the contested law involved being a municipal ordinance, Petitioners rely on the statement of Mr. Justice Van Devanter, in the *King* case. (*King Mfg. Co. vs. Augusta City Council, et al.*, 277 U. S., 100.) In regards to the relationship of a municipal ordinance to the Constitution of the United States, he stated that:

"As respects their validity, under the Constitution of the United States, all are on the same plane."

Petitioners further submit, that this Court has consistently held contrary to the ruling of the Supreme Court of the State of Ohio, in all matters dealing with discrimination on the basis of residency or non-residency.

These authorities will be presented in detail in the argument section of this Petition. The decisions of this Court, whether affecting rights of citizens of different states; unconstitutional restraint of trade; a burden on the commerce; interstate commerce regulations; the unequal protection of the laws; the taking of property without due process of the law; or a violation of the rights, privileges and immunities of citizens of the United States; are all based on the theory that a classification of persons or businesses, on the basis of residency or non-residency, is invalid, unlawful and therefore void.

The damage to be suffered by these petitioners under authority of this contested decision would be irreparable. For over 20 years, since the very inception of No. 3.3710, January 13, 1931 (R. p. 5), the Petitioners, non-resident meat handling establishments, have invested their capital and increased the value of their business holdings in reliance on their principal market in the City of Cleveland. In one fell swoop, by reason of the decision of the Supreme Court of the State of Ohio, the court of last resort in the State of Ohio, they will be forced to cease doing business in the City of Cleveland; or in the alternative, end up bankrupt due to the burdensome and oppressive competition, advantageous to resident meat handling establishments located in the City of Cleveland.

Finally, Petitioners assert, that although the question of "unlawful discrimination" has been considered in prior decisions of this Court, the matter of a municipality im-

posing a discriminatory inspection fee solely on non-resident slaughter houses, in preference to those located within the city has never been decided by the Supreme Court of the United States.

ARGUMENT.

Part I.

The circumstances of this case are readily apparent. The discriminatory operation of No. 3.3710 is unquestionably disclosed by the Stipulation of Fact. (R. p. 12.)

The pleadings put in issue, No. 3.3710 (R. p. 5) as discriminatory and violative of petitioners' rights under the Constitution. Also, that the ordinance in its operation and application constitutes an unconstitutional restraint of trade. (R. p. 6.)

That No. 3.3710 abridges and violates Petitioners' rights to engage in a legal and lawful business in the City of Cleveland (R. p. 6); that the preferential and discriminatory operation of 3.3710 in favor of the slaughter houses located in the City of Cleveland will result in irreparable harm, damage, and injury to the business and property of petitioners (R. p. 7); that injunctive relief is prayed for, restraining and enjoining the defendant City of Cleveland, and its administrative officers, from imposing, charging and collecting a fee for "routine inspection services customarily rendered." (R. p. 7.)

The Stipulation of Fact establishes the status of the parties (R. p. 12); part of the City of Cleveland's charter (R. p. 13); the ordinance 3.3710 (R. pp. 14-15); pertinent ordinances (R. p. 15); the directive increasing charges (R. pp. 15-16); the definition of the phrase "routine inspection services customarily rendered" (R. pp. 16-17); and most important of all, the fact that "routine inspection

services customarily rendered," must be paid for by non-resident slaughter houses, and rendered free of any charge whatsoever, to resident slaughter houses. (R. p. 17.)

Nothing in the pleadings, stipulation of fact, or record, extenuates, explains or justifies, the discriminatory application of the ordinance in controversy. The only inference of justification, is contained in respondent's answer. (R. p. 10.)

> "and defendants say that said inspection service cannot be rendered on any other than a self-sustaining basis for want of any appropriation of funds therefor by the council of the City of Cleveland;"

The validation of No. 3.3710 based on the conclusion of law as set forth in the opinion of the Court of Appeals of the Eighth District of Ohio, apparently relies on that allegation of fact for justification.

> "It is our conclusion that the ordinance in question is a valid exercise of the police power under the Home Rule Provisions of the charter of the City of Cleveland and must be upheld."

Of course, if the quoted allegation of fact applied equally to all meat handling establishments doing business in the City of Cleveland, including petitioners, the charge for "routine inspection services customarily rendered," might be legally justified. But the contrary is true as the Stipulation of Fact discloses. This statement applies to petitioners only, and particularly excludes slaughter houses located in the City of Cleveland, from this charge provision of No. 3.3710 (R. p. 17.)

As has been stated previously, the standards and manner of inspection are dictated and imposed by the Food and Drug Administration of the Cleveland Division of Health. Petitioners have no choice but to accept whatever super-

vision the Cleveland Inspection Authority chooses to employ. Accordingly, eliminating the charge for travel time, travel expense of "bureau employes" to and from non-resident slaughter houses and the City of Cleveland, and whatever overtime services are rendered by the Department (all of which are conceded as proper and justifiable by Petitioners), the actual expense of conducting the required inspection for either resident or non-resident establishments would be identical. The cost would be no different than that for "routine inspection services customarily rendered," free to slaughter houses located in the City of Cleveland.

The fact that ordinances 3.4137 (R. p. 15), 3.4138 (R. p. 15) and 3.4139 (R. p. 15) are prohibitive, restrictive, confiscatory, compulsory and mandatory under penalty; making payment under the contested ordinance 3.3710 by petitioners, a prerequisite to their compliance with the law, gives rise to a circumstance, perilous to the welfare of the citizens of the United States, and grossly repugnant to the Constitutional provisions of Section I of the Fourteenth Amendment.

Petitioners invoke the jurisdiction of this Court, under Title 28, U. S. C., Section 1257 (3) by a petition for writ of certiorari, involving the validity of a state statute. Under authority of this Court's decision, a "state statute" in this context means every legislative action to which a state gives the force of law, including state constitutional provisions, state statutes, and municipal ordinances.

Williamson v. Bruffy, 96 U. S. 176-183;
King Mfg. Co. vs. City Council of Augusta, 277 U. S. 100-104-105;
Railway Express Agency vs. Virginia, 282 U. S. 440;
Jamison vs. Texas, 318 U. S. 413-414.

Paragraph 2 of the syllabi, in the *King* case, is quoted following:

"An ordinance of a city fixing rates * * * is a 'statute' of the state in this sense."

Mr. Justice Van Devanter rendering the court's opinion in this case (page 103) states that:

"The judicial power of the United States shall extend, among others, to all cases in law and equity arising under the Constitution, 'laws' of the U. S. * * *, Article 3 Section 2."

Then on page 104 of this case, in reference to the validity of a municipality's ordinance under the Constitution, the following statement is made:

"As respects their validity under the Constitution of the United States, all are on the same plane."

The paragraph at this particular point is concluded by a statement of general inclusion,—

"Like an ordinance of a municipality or an order of a commission."

The authority noted by Mr. Justice Van Devanter for this statement is *Standard Scale Co. vs. Farrell*, 249 U. S., 571-577.

The case of *Jamison vs. Texas*, 318 U. S., 413 follows the rule laid down in the *King* case. Paragraph 2 of the syllabi summarizes a similar holding.

"A municipal ordinance is a 'statute of the state,' within the meaning of judicial code No. 237 (a) (revised —Title 28 Section 1257 (3)) King Mfg. Co. vs. Augusta, 277 U. S., 100 followed, pg. 414."

Mr. Justice Black, rendering the court's opinion in the *Jamison* case (p. 414) (in reference to this Court's jurisdiction on appeal from judgments sustaining the validity

of a municipal ordinance) makes this statement on the authority of the *King* case.

> "We see no reason for reconsidering the King Manufacturing Company case and follow it here."

Then in February of 1953, in the case of *Poulos vs. New Hampshire,* 345 U. S. 395, this Court followed the decision in the *King* case holding that a

> "state statute within this context would include a municipal ordinance."

Part II.

Conceding that the defensive allegation in respondents' Answer filed in the first court has merit, that:

> "said inspection service cannot be rendered on any other than a self-sustaining basis for want of any appropriation of any funds therefor by the council of the City of Cleveland;"

may the act of the City of Cleveland in imposing an inspection fee solely on non-resident slaughter houses, in support of one of its governmental functions, receive judicial approval in light of the safeguarding provisions of the Constitution of the United States?

Emphasizing their basic contention, Petitioners point out that the vice in No. 3.3710 does not lie in the provision for "the reasonable cost of inspection." But in the discriminatory charge for "routine inspection services customarily rendered"; to non-resident slaughter houses only.

That the decision of the Supreme Court of Ohio, affirming the judgment of the lower courts, is contrary in principle to prior decisions of this Court, is clearly evident from the dictum quoted in the following authorities cited.

A landmark in decisions considering "discriminatory laws" is the case of *Ward vs. Maryland,* 79 U. S. 418.

Here the statute involved, exacted license fees from all traders in the State of Maryland. Residents on the basis of being citizens of Maryland were charged $15.00 to $150.00 dependent on inventory valuation. Non-residents were charged a $300.00 fee renewable annually. The court held the statute invalid and "pro tanto repugnant to the Federal Constitution and void." The principle upon which this case was decided is quoted following:

> "That the statute imposed a discriminating tax upon non-resident traders."

On the other hand, the Supreme Court of Ohio affirmed the decision of the appellate court, Eighth District of Ohio, validating No. 3.3710, imposing a fee for "routine inspection services customarily rendered" meat handling establishments located beyond the limits of the City of Cleveland, no charge for the same service to be exacted from establishments located within the City of Cleveland.

Another decision of this Court contrary to the judgment of the Supreme Court of the State of Ohio and involving the same principle, is the case of *Voight v. Wright*, 141 U. S. 62.

The statute in this case required inspection of flour brought into the State of Virginia and none of flour manufactured there. This Court held that the statute was invalid, basing its decision on the principle that the statute requiring inspection of flour brought into Virginia and none on that produced in local industry was "a discriminatory law."

In line with the decisions cited, this Court in the case of *Bremmer vs. Rebman*, 138 U. S. 78 again approved the doctrine enunciated, contrary to the decision of the Supreme Court of the State of Ohio.

A Virginia statute in this instance enacted legislation requiring inspection of meat produced beyond the limit of a hundred miles from the place of sale. No inspec-

tion required of meat produced within a hundred miles of the place of sale. This Court held that this act was void. The principle recited in the dictum invalidating the act, was that it imposed a discriminating tax upon products and industries of some states (non-resident), in favor of the products and industries of other states (residents).

In the case of *Cotting vs. Kansas City Stock Yards Co.* and the *State of Kansas,* 183 U. S. 79, this Court ruled similarly in another case involving the principle of unlawful discrimination. This matter involved stock yard operators in the City of Kansas and operators beyond the City of Kansas. This Court held that the attempted regulation, resulting in discrimination "denied to the appellant Company the equal protection of the laws."

In a more recent case, *Toomer et al. vs. Witsell, et al.,* 334 U. S. 385, this Court again indicated its disapproval of discriminating legislation.

This case involved license fees for resident and non-resident fishermen of the State of South Carolina. Resident fishermen were required to pay $25.00 annually, while non-resident fishermen were charged the sum of $2500.00 annually. On the basis of the discrimination, the court held that this attempt to charge non-residents a higher fee than residents, constituted a violation of the privileges and immunities clause of Article IV Section 2 of the Constitution.

A pertinent portion of the Opinion is quoted at length following:

> "It was long ago decided that one of the privileges which the clause guarantees to citizens of State A, is that of doing business in State B on terms of substantial equality with the citizens of that state."

Another case of this Court, consistent with the decisions cited, is that of *Guy vs. Baltimore,* 100 U. S. 434. In

this case wharfage fees were imposed upon vessels laden with products of other states and none upon vessels laden with products from the State of Maryland.

This Court held that the ordinance in question was in conflict with the Constitution of the United States. On the principle of discrimination this Court stated:

> "A state cannot, in the exercise of her taxing power, impose upon the products of another state, brought within her limits for sale or use, a more onerous burden or tax than upon like products of its own territory, nor discriminate against a citizen by reason of his being engaged in thus bringing or in selling them."

In conclusion, petitioners state that the decision of the Supreme Court of the State of Ohio, affirming the judgment of the lower courts, is contrary to the decisions of this Court; that it violates their constitutional rights under Section 1 of the Fourteenth Amendment to the Constitution of the United States and is unquestionably contrary in principle, to the consistent decisions of this Court in matters involving "discriminating laws," "discriminating license fees" and "discriminating taxes."

CONCLUSION.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

KENT MEYERS,

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